



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 413 and 512

[CMS-1768-CN]

RIN 0938-AU79

Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals With Acute Kidney Injury, End-Stage Renal Disease Quality Incentive Program, and End-Stage Renal Disease Treatment Choices Model; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors that appeared in the November 7, 2022 **Federal Register** in the final rule entitled “Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals With Acute Kidney Injury, End-Stage Renal Disease Quality Incentive Program, and End-Stage Renal Disease Treatment Choices Model” (referred to hereafter as the calendar year (CY) 2023 ESRD PPS final rule).

DATES: This correction is effective January 1, 2023.

FOR FURTHER INFORMATION CONTACT: ESRDPayment@cms.hhs.gov, for issues related to the ESRD PPS and coverage and payment for renal dialysis services furnished to individuals with acute kidney injury (AKI).

ESRDApplications@cms.hhs.gov, for issues related to applications for the Transitional Add-On Payment Adjustment for New and Innovative Equipment and Supplies (TPNIES) or the Transitional Drug Add-on Payment Adjustment (TDAPA).

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2022-23778 of November 7, 2022 (87 FR 67136), there were a number of typographical errors that are identified and corrected in this correcting document. The provisions in this correction document are effective as if they had been included in the document that appeared in the November 7, 2022 **Federal Register**. Accordingly, the corrections are effective January 1, 2023.

II. Summary of Errors

On pages 67170 and 67171, we inadvertently made a typographical error to a website address. Therefore, we are correcting the website address from "https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ESRDpayment/Educational_Resources" to "https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ESRDpayment/Educational_Resources."

On page 67194, in the first column, we inadvertently made a typographical error by including an incorrect symbol (ℓ) to the phrase "100 cells/ℓL or > 0.1 x 10/L." In addition, the font size of this phrase inadvertently appears larger than the standard **Federal Register** text. Therefore, we are correcting these errors by replacing the phrase "100 cells/ℓL or > 0.1 x 10/L" to "> 100 cells/μL or > 0.1 x 10/L".

On page 67195, in the third column, we inadvertently made a typographical error by including an incorrect symbol (ℓ) to the phrase "(> 100 cells/ℓL, > 50 percent PMN).⁴⁶". In addition, the font size of this phrase is inadvertently larger than the standard **Federal Register** text. Therefore, we are correcting these errors by replacing the phrase "(> 100 cells/ℓL, > 50 percent PMN).⁴⁶" to "(> 100 cells/μL, > 50 percent PMN).⁴⁶".

III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Social Security Act (the Act) requires the

Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date of the APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this correcting document does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements. This document corrects typographic errors and does not make substantive changes to the policies or payment methodologies that were adopted in the CY 2023 ESRD PPS final rule. Thus, this correcting document is intended to ensure that the information is accurately reflected in the final rule.

Even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the CY 2023 ESRD PPS final rule or delaying the effective date of the correction would be contrary to the public interest because it is in the public interest to ensure that the rule accurately reflects our policies as of the date they take effect. Further, such procedures would be unnecessary because we are not making any substantive revisions to the final rule, but rather, we are simply correcting the **Federal Register** document to reflect the policies that we previously

proposed, received public comment on, and subsequently finalized in the CY 2023 ESRD PPS final rule. For these reasons, we believe there is good cause to waive the requirements for notice and comment and delay in effective date.

IV. Correction of Errors

In FR Doc. 2022-23778 of November 7, 2022 (87 FR 67136), make the following corrections:

1. On page 67170, in the second column; in footnote 14, at the bottom of the page, the website address “https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ESRDpayment/Educational_Resources” is corrected to read “https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ESRDpayment/Educational_Resources.”
2. On page 67171, the first column; in footnote 15, at the bottom of the page, the website address “https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ESRDpayment/Educational_Resources” is corrected to read “https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ESRDpayment/Educational_Resources.”
3. On page 67171, in the second column; in footnote 16, at the bottom of the page, the website address “https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ESRDpayment/Educational_Resources” is corrected to read “https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ESRDpayment/Educational_Resources.”
4. On page 67194, in the first column; in the first complete paragraph, in line 22, the phrase “100 cells/ γ L or $> 0.1 \times 10^9$ /L” is corrected to read “ > 100 cells/ μ L or $> 0.1 \times 10^9$ /L”.
5. On page 67195, in the third column; in the first paragraph, in line 11, the phrase “(> 100 cells/ γ L, > 50 percent PMN).⁴⁶” is corrected to read “(> 100 cells/ μ L, > 50 percent PMN).⁴⁶”.

Elizabeth J. Gramling,

Executive Secretary to the Department,
Department of Health and Human Services.

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